

ORS 23.240(2)
Homestead Exemption

Corcilus v. Hartvig (In re Corcilus), BAP No. OR-90-1767 (9th Cir. BAP 1993) unpublished (affirming Judge Perris)

For proceeds from the sale of a residence to be exempt under ORS 23.240(2), two conditions must be met. First, the proceeds can only be held for a year. Second, the proceeds must be held with the intention to procure another homestead. The trial court did not err in finding that the second element was not met, and therefore the proceeds from the sale of the debtor's residence were not exempt.

NOT FOR PUBLICATION

U.S. BANKRUPTCY COURT
DISTRICT OF OREGON
FILED

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JUN 30 1993

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U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

BY *LL* DEPUTY

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re

RANDY J. CORCILIOUS,

Debtor.

RANDY J. CORCILIOUS,

Appellant.

v.

DONALD H. HARTVIG, Chapter
7 Trustee; L. Hazel Watson,

Appellees.

) BAP No. OR-90-1767-OJR

) BK. No. 390-31561-P7

MEMORANDUM

Argued and Submitted on February 17, 1993
at Portland, Oregon

Filed - JUN 30 1993

Appeal from the United States Bankruptcy Court
for the District of Oregon

Honorable Elizabeth L. Perris, Bankruptcy Judge, Presiding

Before: OLLASON, JONES and RUSSELL, Bankruptcy Judges.

1. **FACTS**

2. Randy J. Corcilius ("Corcilius") sold his homestead on June
3. 6, 1989. The homestead was subject to the judgment lien of L.
4. Hazel Watson ("Watson"), so Corcilius directed that sale
5. proceeds in an amount of 150% of the lien be held by the title
6. company pursuant to a holdback agreement. The agreement gave
7. Corcilius until January 2, 1990 to resolve matters with Watson.
8. If the matter was not resolved by then the title company was to
9. pay off Watson from the funds. In December 1989 one of his
10. former wives obtained an temporary restraining order against the
11. title company as to the funds it held. Around that same time a
12. second wife apparently garnished the funds. The first wife then
13. obtained a preliminary injunction in January 1990.

14. Corcilius was not able to reach an agreement with Watson.
15. He then retained legal counsel on January 18, 1990. His counsel
16. was still unable to reach an agreement with Watson.
17. Consequently, Corcilius filed for bankruptcy on March 26, 1990.
18. The title company still held the sale proceeds. Corcilius
19. claimed the funds exempt under the Oregon homestead exemption
20. statute.

21. Oregon law allows a seller to claim homestead proceeds
22. exempt if the proceeds are not held for more than a year and are
23. held with the intention to procure another homestead with the
24.
25.
26.

1 funds. Or. Rev. Stat. § 23.240(2)¹. The trustee filed a
2 timely objection on June 4, 1990 just days before the one year
3 mark of the sale of the homestead. The trustee argued that
4 Corcilius did not meet the requirements of the statute because,
5 by the time of the hearing, the funds had been held more than
6 one year. Trustee also argued that Corcilius did not have the
7 requisite intent to purchase another homestead.

8 Corcilius argued that the statute should be construed to
9 mean that he had one year from the date of receipt of the funds
10 to use them for another homestead. Therefore, because he had
11 not yet received the funds, the time period had not begun to
12 run. Alternatively, if it had begun to run it was tolled by one
13 of the intervening events - the holdback agreement, the
14 injunction obtained by the ex-wife, the filing of the
15 bankruptcy, or the objection to the exemption filed by the
16 trustee. Furthermore, Corcilius claims that he did have the
17 requisite intent to purchase another homestead.

18 The bankruptcy court upheld the objection finding that
19 Corcilius did not hold the funds with the intent to procure
20 another homestead. The court also ruled that the court found
21 the one year period ran from the date of the sale.
22

23 ¹Or. Rev. Stat. § 23.240(2) states:

24 The exemption shall extend to the proceeds derived from
25 such sale to an amount not exceeding \$15,000.00 or
26 \$20,000.00, whichever amount is applicable under
subsection (1) of this section, if the proceeds are held
for a period not exceeding one year and held with the
intention to procure another homestead therewith.

1 Furthermore, even if tolling were possible, it should not be
2 applied in this case because Corcilius had voluntarily entered
3 into the holdback agreement which ultimately led to the delay.
4 This appeal followed.

5 STANDARD OF REVIEW

6 The interpretation of state law is reviewed de novo. The
7 issue regarding Corcilius' intent to purchase another homestead
8 is an issue of fact that is reviewed under a clearly erroneous
9 standard.

10 ISSUES ON APPEAL

11 Did Corcilius hold the funds with the intent to procure
12 another homestead?

13 DISCUSSION .

14 The Oregon statute has two conditions. The first, is that
15 the proceeds be only held for a year. The second is that the
16 proceeds be "held with the intention to procure another
17 homestead therewith." Both conditions must exist.

18 The only evidence regarding Corcilius' intent to procure
19 another homestead was vague testimony that the debtor had made a
20 bid on a motor home within the time period. Corcilius did not
21 recall many details of the matter and never followed up on it.
22 He also never made any other attempts to purchase a homestead.
23 The trial court found that Corcilius did not have the requisite
24 intent stating that during the one year period Corcilius did not
25 make an "effort to locate or purchase a new homestead."

26 The burden is on Corcilius to show that the bankruptcy

1 court's finding is clearly erroneous. He has been unable to do
2 that. In fact, the record supports the court's finding. The
3 holdback agreement was simply an attempt to gain time to
4 negotiate with Watson. If anything, it appears that Corcilius
5 just sat back until the wife obtained the injunction. The trial
6 court's finding was not clearly erroneous.

7 **CONCLUSION**

8 Both conditions of the Oregon statute must be met for the
9 exemption to allowed. The bankruptcy court denied the exemption
10 finding that Corcilius did not have the requisite intent. This
11 finding is not clearly erroneous. Therefore, the bankruptcy
12 court is AFFIRMED.